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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/812,107

03/30/2004

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2880

7590
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10/16/2009

EXAMINER

LANGDON, EVAN H

ART UNIT

PAPER NUMBER

3654

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DELIVERY MODE

10/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/812,107	Applicant(s) BARNETT, JAMES EARL	
	Examiner EVAN H. LANGDON	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 19: It is not understood what is meant by the limitation "thereby" recited on line 5.

In regard to claim 22, line 2 only, "the support tab" should be --a support tab--.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Panzarella et al. (US 7,458,760).

Panzarella discloses a apparatus 10 which can be attached varying mounting surfaces (col. 4 lines 28-35) by aligning a hole in the base 13 of the apparatus and by aligning holes 28 in extending members 14/16 of the base in such a manner that the placement of bolts 32 (Fig. 1) through the holes in the base of the apparatus and the

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holes in the extending members and holes in the mounting surface provide a stable three point anchoring system providing for the attachment of a hoist.

Panzarella while discloses extending member attached to varying surfaces, it fails to teach the apparatus 10 attached to flanges of varying sizes. However, one of ordinary skill in the art is expected to routinely experiment with the parameters, especially when the specifics are not disclosed, so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been obvious through routine experimentation and optimization, for one of ordinary skill in the art to attach the extending members to flanges.

In regard to claim 20, Panzarella teaches the base 13 which includes a centering hole 21 (Fig 1) through which a mounting bolt 21 with a tapered head passes;

the base which includes threaded holes into which guide bolts 21/30/25 may be screwed;

the base which includes extending members 14/16;

the extending members which include slotted grooves (Fig. 1 and 4);

the extending members which include centering holes through which mounting bolts 21/30/25 with tapered heads may pass;

the base which includes cavities 24 through which the extending members 14/16 may pass;

the base which includes threaded holes through which extending member locking bolts 21/30/25 may be screwed;

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the guide bolts 21/30/25 which screw into the threaded holes and pass through slotted grooves of the extending members;

the mounting bolts 21/30/25 with tapered heads which pass through the base at centering hole and the extending members at the centering holes and universally passing through the mounting surface

tapered nuts 33 which thread onto the mounting bolts with tapered heads.

In regard to claim 21, Panzarella teaches a mounting pedestal 102 which provides for the capacity to insert a hoist 100;

the mounting pedestal which includes drilled threaded holes through which a locking screw can be threaded securing the hoist to the mounting pedestal.

Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (US 3,671,015).

Sullivan discloses a apparatus which can be attached varying mounting surfaces (R) by aligning a hole 50 in the base 38 of the apparatus and by aligning holes 51 in extending members 52 of the base in such a manner that the placement of nail through the holes in the base of the apparatus and the holes in the extending members and holes in the mounting surface provide a stable three point anchoring system providing for the attachment of a hoist 5.

Sullivan while discloses extending member attached to varying surfaces with nails, it fails to teach the apparatus attached to flanges of varying sizes using bolts.

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However, one of ordinary skill in the art is expected to routinely experiment with the parameters, especially when the specifics are not disclosed, so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been obvious through routine experimentation and optimization, for one of ordinary skill in the art to attach the extending members to flanges with bolts

In regard to claim 22, Sullivan teaches a support tab 42, wherein the support tab to which a support 44 can be attached via a drilled hole in order to provide for increased strength of an attached hoist and redundancy of safety in the event of the failure of a hoist. It would have been obvious design variant to one having ordinary skill in the art to use a cable or a support bar.

Response to Arguments

Applicant's arguments filed 15 June 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the Panzarella reference fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies i.e., "availability of space in the opening (Response at 2, 3); placement of drill holes (Response at 2); knuckle hinge joints (Response at 2); a safety load of 9,000 pounds (Response at 2, 3); are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are

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not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the Panzarella reference would not be able to attach to flanges of varying sizes, the applicant' admits that the Panzarella reference could attach to a flange if the holes were aligned. The limitation "flanges of varying sizes" is being interpreted to mean 'at least more than one size flange.' Therefore, the ability of the Panzarella apparatus to attach to a flange and the ability of the extending members 14/16 to pivot and use multiple different mounting holes 28 would make it obvious to one of ordinary skill in the art to attach the extending members to more than one size flange.

In response to applicant's argument that the Sullivan reference fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies i.e., "availability of space in the opening (Response at 2, 3); placement of drill holes (Response at 2); knuckle hinge joints (Response at 2); a safety load of 9,000 pounds (Response at 2, 3); are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the Sullivan reference would not be able to attach to flanges of varying sizes, the applicant' admits that the Sullivan reference could attach to a flange in horizontal alignment (Response at 3). The limitation "flanges of varying sizes" is being interpreted to mean 'at least more than one size flange.'

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Therefore, the ability of the Sullivan apparatus to attach to a flange and the ability of the extending members to align with more than one mounting hole in horizontal alignment would make it obvious to one of ordinary skill in the art to attach the extending members to more than one size flange.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **EVAN H. LANGDON** whose telephone number is 571-272-7057. The examiner can normally be reached on Monday through Friday, 8:30 am - 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Q. Nguyen can be reached on 571-272-6952. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/EVAN H LANGDON/
Primary Examiner, Art Unit 3654